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and must be taken to stand for the proposition that an unperformed contingency will not prevent the next devisee from holding pending the occurrence of the contingency.

THE CIVIL ASPECTS OF CHAMPERTY AND MAINTENANCE.—Maintenance and champerty were criminal as well as civil wrongs at common law,¹ and were also condemned by the civil law.² At an early date, various exceptions to the strict rules were recognized. Thus it was not maintenance for one to support a suit in which he had an interest, even though contingent,³ or out of charitable motives,⁴ or where legal relationship, actual⁵ or supposed,⁶ or kinship,⁷ existed between the parties.⁸ The reason for the enactment of the so-called maintenance and champerty statutes⁹ was the necessity of curbing the

v. Fletcher (1914) 77 N. H. 216, 90 Atl. 510; *Wakefield v. Wakefield* (1912) 256 Ill. 296, 100 N. E. 275; *In re Lawrence's Estate* (1902) 37 Misc. 702, 76 N. Y. Supp. 653, but it seems that any surplus is distributed among the remaindermen. *Meek v. Trotter, supra*. If the legacy is of money, one taking subject to being divested is permitted to receive only the income, in order to protect contingent rights to the principal. *In re Disston's Estate* (1916) 25 Pa. Distr. R. 106; *cf. note 13, supra*. But where a remainder to a class is accelerated, the determination of that class is also accelerated, and it seems that further contingencies will be extinguished. *In re Crothers' Trusts, supra*; *Re Johnson, supra*; but *cf. In re Robson* [1916] 1 Ch. 116.

¹Stat. 13 Edw. I. c. 49 (1285); Stat. 28 Edw. I. c. 11, § 1 (1300); 2 Bishop, *New Criminal Law* (8th ed.) §§ 122, 131. Though the courts often use the words interchangeably, maintenance, strictly speaking, is an officious intermeddling in another's suit, while champerty is maintenance plus an agreement to divide the proceeds of the suit, if successful. 4 Bl. Comm. *135; 1 Hawkins, *Pleas of the Crown* (8th ed.) 463.

²Institutes of Justinian, Book IV, Title 16, § 1.

³*Sharp v. Carter* (1735) 3 P. Wms. *375, *378; *Thallhimer v. Brinckerhoff* (N. Y. 1824) 3 Cow. 623; *British etc. Conveyors v. Lamson etc. Co.* [1908] 1 K. B. 1006.

⁴*Rothewel v. Power* (1431) Y. B. 9 Hen. VI, 64; *Holden v. Thompson* [1907] 2 K. B. 489.

⁵See *Elborough v. Ayres* (1870) 39 L. J. Ch. 601.

⁶See *Findon v. Parker* (1843) 11 M. & W. *675.

⁷*Thallhimer v. Brinckerhoff, supra*; see *Graham v. McReynolds* (1891) 90 Tenn. 673, 18 S. W. 272.

⁸The non-assignability of a chose in action was but a manifestation of the law of maintenance. Co. Litt. § 347; 2 Roll. Abr. 45, c. 40; see *Gilman v. Jones* (1889) 87 Ala. 691, 5 So. 785. So also was the rule that a deed of land in the adverse possession of another was void as to the latter, *Dexter v. Nelson* (1844) 6 Ala. 68; see *Fort Wayne etc. Ry. v. Mellett* (1883) 92 Ind. 535, though operative between the parties by estoppel. See *Paton v. Robinson* (1909) 81 Conn. 547, 71 Atl. 730. This rule has been abolished by statute or decision in many states, Cal. Civ. Code, § 1047; Mass. Rev. Laws, c. 127, § 6; Minn. Gen. Stat. 1913, § 6829; *Doe d. Bright v. Stevens* (1855) 6 Del. 31; *Chesapeake Beach Ry. v. Washington etc. R. R.* (1905) 199 U. S. 247, 26 Sup. Ct. 25, but is still in force in others. N. Y. Real Property Law, § 260; *Smith v. Klay* (1904) 47 Fla. 216, 36 So. 54; *Galbraith v. Payne* (1903) 12 N. D. 164, 96 N. W. 258; *Powers v. Van Dyke* (1910) 27 Okla. 27, 111 Pac. 939.

⁹See note 1, *supra*.

oppression of the weak by the great lords who trafficked in law suits.¹⁰ Many courts, therefore, arguing that the state of society which gave rise to the doctrine of maintenance and champerty has long since passed away, have greatly modified it or denied its existence altogether.¹¹ However, a common law action for maintenance can still be brought in England, as appears by the recent case of *Neville v. London Express Newspapers Ltd.* (K. B. 1916) 142 L. T. 200. There the defendant, a corporation, induced persons who had paid an entrance fee to a competition conducted by the plaintiff to sue the plaintiff for the recovery of their money, and offered to pay the legal expenses of the suit. Suit was brought and judgment rendered against the present plaintiff with costs. The court held that the latter could recover the costs and legal expenses of the prior suit because the defendant had been guilty of maintenance, even though, since the former suit was successful, there was no special damage,¹² and though the defendant was a corporation.¹³

Due to their position as officers of the court, the law has always been very strict in applying the doctrines of champerty and maintenance to attorneys. The buying of a chose in action by an attorney with intent to sue on it has been called "the most odious form of champerty",¹⁴ and is made a misdemeanor and ground for disbarment in some states.¹⁵ Though a contract for a contingent fee in payment of services is perfectly valid, the agreement is champertous if in addition the attorney contracts to pay the expenses of the suit, since the risk falling upon the attorney is then financial, and not merely potential through loss of time.¹⁶ The attorney cannot, of course, recover on the champertous contract, but in many jurisdictions he is entitled to the reasonable value of his services in *quantum meruit*.¹⁷

An interesting application of the modern law of champerty is presented in the recent case of *People ex rel. Holzman v. Purdy* (Sup. Ct. 1916) 162 N. Y. Supp. 65. There the relators, in violation of Penal Law, § 270, employed one T., who was not an attorney, to perform legal services. T. employed counsel to represent the relators in certain tax proceedings. The court, in holding that the employment of T. partook of champerty, said that, though a court will in general refuse to proceed with a case when the fact that it is tainted with champerty

¹⁰*Thalhimer v. Brinckerhoff, supra*; *Gilman v. Jones, supra*.

¹¹See note 10, *supra*; *Merchants' Protective Ass'n. v. Jacobsen* (1912) 22 Idaho, 636, 127 Pac. 315. In New York, only so much of the law of maintenance and champerty is retained as is preserved by statute. *Matter of Clark* (1906) 184 N. Y. 222, 77 N. E. 1.

¹²*Scott v. National Society* (1909) 25 T. L. Rep. 789, 791.

¹³Whatever may be the rule as to a corporation in liquidation, see *Metropolitan Bank v. Pooley* (1885) 10 App. Cas. 210, 218, a corporation under ordinary circumstances should clearly be liable for maintenance, as it is for all other torts. See *Hannon v. Siegel Cooper Co.* (1901), 167 N. Y. 244, 60 N. E. 597; *Clark, Corporations* (3rd ed.) § 69.

¹⁴*Slade v. Zeitfuss* (1904) 77 Conn. 457, 59 Atl. 406.

¹⁵Cal. Penal Code, § 161; Conn. Gen. Stat. § 1351; N. Y. Penal Law, § 274.

¹⁶*In re Evans* (1900) 22 Utah, 366, 62 Pac. 913; *Roller v. Murray* (1907) 107 Va. 527, 59 S. E. 421; *Taylor v. Perkins* (1913) 171 Mo. App. 246, 157 S. W. 122.

¹⁷See 16 Columbia Law Rev. 517.

has been brought to its attention, yet, since all the parties acted *bona fide*, the case could proceed on abrogation of the champertous agreement. The statement that the court can dismiss a suit merely because the plaintiff has made a champertous contract with his attorney is erroneous. The existence of such a contract is wholly a collateral matter and therefore constitutes no reason for denying the plaintiff recovery on an otherwise just claim, whether set up by way of defense or otherwise.¹⁸ But the final disposition of the case is correct and well illustrates the extent to which the doctrine of champerty and maintenance still lives in the law of every jurisdiction. Stripped of its ancient technical strictness, it is now a rule of public policy, which may be invoked to prevent vexatious litigation and officious intermeddling in the quarrels of others.¹⁹

¹⁸*Isherwood v. Jenkins Lumber Co.* (1902) 87 Minn. 388, 92 N. W. 230; *Elser v. Village of Gross Point* (1906) 223 Ill. 230, 79 N. E. 27; see *Chamberlain v. Grimes* (1894) 42 Neb. 701, 60 N. W. 948. Wisconsin is the only jurisdiction *contra*; *Decker v. Becker* (1910) 143 Wis. 542, 128 N. W. 67; Tennessee, formerly *contra*, is now in accord with the majority view. *Robertson v. Cayard* (1903) 111 Tenn. 356, 77 S. W. 1056, overruling *Webb v. Armstrong* (1844) 24 Tenn. 379.

¹⁹See *Brown v. Ginn* (1902) 66 Ohio, 316, 64 N. E. 123; *Jahn v. Champagne Lumber Co.* (C. C. 1908) 157 Fed. 407; *Dent v. Arthur* (1911) 156 Mo. App. 472, 137 S. W. 285.